

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



MAR 1 2001

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Mr. Henry Nunn, Chief
Division of Apprenticeship Standards
Department of Industrial Relations
State of California
455 Golden Gate Avenue, 8th Floor
San Francisco, California 94102

MAILED & FAXED

Re: Proposed Section 212.05 of the California Apprenticeship Code

Dear Mr. Nunn:

The Office of Apprenticeship Training, Employer and Labor Services ("ATELS") of the U.S. Department of Labor ("DOL") has received a copy of your agency's proposed modifications to the proposed California apprenticeship regulations which were distributed for comment on February 9, 2001. Because we have not had sufficient opportunity to review the entirety of the proposed modifications and, further, because the comment period closes today, this letter provides just our comments on the proposed modifications to proposed Section 212.05 of the California Apprenticeship Code, California Code of Regulations. The absence of comment on other proposed provisions should not be construed as an expression of approval or disapproval of those provisions by any DOL agency.

Based on our review of the proposed revisions and additions in Section 212.05(a) and (d), respectively, as well as the statement by Commissioner Balgenorth about the basis for those proposed provisions, we have determined that the proposed regulation does not resolve the conflict with the National Apprenticeship Act ("NAA") identified in our letter of January 23, 2001 (copy enclosed). Therefore, we reaffirm our preliminary determination that the proposed regulation, Section 212.05, violates the NAA, because the proposed regulation would permit an inappropriate limitation on the approval of new apprenticeship programs on the basis of a "needs" standard. We interpret the NAA as requiring ATELS to not only protect the welfare of apprentices, but also to promote apprenticeship opportunities. The proposed regulation would significantly limit, rather than promote, those opportunities.

We can suggest one possible way to revise the proposed regulation so that it addresses our concerns. California Labor Code ("CLC") § 3075(c) authorizes you to establish by regulation "special circumstances" under which apprenticeship programs may be approved, notwithstanding the "needs" standard in CLC § 3075(h). We suggest that you modify proposed Section 212.05 to add a provision which states that the California Apprenticeship Council construes DOL's interpretation of the NAA to prohibit the proposed "needs" standard as a special circumstance,

thereby authorizing the approval of new apprenticeship programs in the building and construction trades without regard to the "needs" standard in CLC § 3075(b). If you choose this option, we further suggest that you obtain an opinion from the California Attorney General finding that such a provision to be valid under California law. This would enable us to conclude that California law is consistent with our interpretation of the NAA. We would be happy to meet with you to discuss this issue and how best to remedy this situation.

We are aware of concerns, such as those related to program quality, about the approval of new programs in geographic areas where existing programs already provide training and other services for a particular craft or trade. We believe that careful application of the existing apprenticeship standards and regulations can prevent the approval of deficient programs. Also, the State's ongoing monitoring of program operations can protect the welfare of the apprentices and the integrity of the apprenticeship system. Further, we believe that the expansion of apprenticeship opportunities, through the approval of new programs, is a valuable tool in addressing workers' skill training needs and providing workers with opportunities to find better employment.

If you would like to meet or have any questions, please contact me at 202-693-2796.

Sincerely,



ANTHONY SWOOPE

Administrator

Office of Apprenticeship Training, Employer and Labor Services

cc: Stephen Smith, Director, Department of Industrial Relations